

# **EXHIBIT 4**

**FILED UNDER SEAL**

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEVADA

_____	)	
CUNG LE, NATHAN QUARRY, JON	)	
FITCH, BRANDO VERA, LUIS	)	
JAVIER VAZQUEZ, and KYLE	)	
KINGSBURY, on behalf of	)	
themselves and all others	)	Case No.
similarly situated,	)	
	)	2:15-cv-01045-
Plaintiffs,	)	RFB-(PAL)
	)	
vs.	)	
	)	
ZUFFA, LLC, d/b/a ULTIMATE	)	
FIGHTING CHAMPIONSHIP and	)	
UFC,	)	
	)	
Defendants.	)	
_____	)	

VOLUME 2

VIDEOTAPED DEPOSITION OF GUY A. DAVIS, CPA

Washington, D.C.

Tuesday, January 30, 2018

MAGNA LEGAL SERVICES  
(866) 624-6221  
[www.MagnaLS.com](http://www.MagnaLS.com)

1 for defendant, Zuffa, LLC.

2 MS. GRIGSBY: Stacey Grigsby, Boies  
3 Schiller & Flexner, for Zuffa, LLC.

4 MR. KOFFMAN: Rich Koffman, Cohen  
5 Milstein, for plaintiffs.

6 THE VIDEOGRAPHER: Will the court  
7 reporter please swear in the witness.  
8 Whereupon,

9 GUY A. DAVIS, CPA,  
10 after having been first duly sworn or affirmed,  
11 was examined and did testify under oath as  
12 follows:

13 - - -

14 EXAMINATION

15 BY MR. NORTH:

16 Q. Good morning, Mr. Davis. You've been  
17 deposed in this case before, so I'll skip a lot  
18 of the formalities today.

19 A. Okay.

20 Q. But I'll just say that if you don't  
21 understand a question, please let me know. And  
22 if you answer, I'll assume you understood the  
23 question. Is that fair?

24 A. That's fair.

1 (Exhibit 1, previously marked for  
2 identification, is attached hereto.)

3 (Exhibit 2 marked for identification  
4 and attached hereto.)

5 BY MR. NORTH:

6 Q. So for reference today I have handed  
7 you a document marked G. Davis Exhibit 1 that was  
8 introduced at your first deposition. It's your  
9 original expert report in this case.

10 And I've also handed you your rebuttal  
11 report which has been premarked G. Davis  
12 Exhibit 2.

13 Do you have those documents?

14 A. I do. May I take a second to look at  
15 them?

16 Q. You may.

17 A. Yes, these both appear to be complete  
18 copies of both reports.

19 Q. Are there any matters on which you  
20 disagree with Elizabeth Davis that you don't note  
21 in one of your reports?

22 MR. KOFFMAN: Object to the form.

23 THE WITNESS: I'm not -- I'm not sure  
24 I can answer that with certainty. She makes

1 a lot of points in her lengthy original  
2 report. I think -- I think the counsel has  
3 instructed me to address certain of her  
4 points that she makes in her report in my  
5 rebuttal. But I can't think of any off the  
6 top of my head.

7 BY MR. NORTH:

8 Q. Can you turn to page 8 of your  
9 original report, please.

10 Is this a complete list of the  
11 assignments you received from plaintiffs' counsel  
12 as of the date of your original report?

13 A. Yes. And it goes on to page 9. Yes.

14 Q. Let's look at page 9, Number 5,  
15 entitled "Financial Capacity."

16 Is it correct that your assignment  
17 here was to determine whether Zuffa had the  
18 financial capacity to pay more compensation to  
19 its fighters than the actual amounts paid?

20 A. Yes.

21 Q. And as part of your work in preparing  
22 your original report, you didn't attempt to  
23 determine how much more Zuffa could have paid  
24 fighters, did you?

1 A. I did not.

2 Q. Did you have all of the relevant data  
3 available to you to perform such an analysis?

4 A. Since the first report, there were a  
5 few extra financial statements that were provided  
6 to us between the date of the first report and  
7 the second report. I believe in particular they  
8 related to 2016. And there may have been one or  
9 two other pieces of information that were relied  
10 upon in preparing my second report that I may  
11 have obtained through independent research.

12 But with the exception of those two, I  
13 think a lot of the data that I had in connection  
14 with my original report was much of the same data  
15 that I used to prepare the second report.

16 Q. You mentioned that there were a few  
17 extra financial statements provided to us. What  
18 does the "us" refer to?

19 A. To Protiviti; to my firm.

20 Q. And why were those provided to  
21 Protiviti?

22 MR. KOFFMAN: Object to the form.

23 THE WITNESS: We asked for them. I  
24 don't believe -- we asked for them -- I

Page 183

1 think we asked for them in the original  
2 report as well, but I don't think they had  
3 been produced yet. And then we asked for  
4 them again, and when we did the second  
5 report they were available.

6 BY MR. NORTH:

7 Q. Do you know one way or another whether  
8 plaintiffs' counsel already had possession of  
9 those reports when you served your original  
10 expert report?

11 A. I do not know.

12 Q. But you asked for the reports before  
13 the original report and you did not receive them.  
14 Is that fair?

15 MR. KOFFMAN: Objection; asked and  
16 answered.

17 You can answer it again.

18 THE WITNESS: I believe it was more of  
19 a general request in connection with the  
20 original report, could we have all the  
21 available audited financial statements for  
22 Zuffa.

23 The two reports that I'm referring to  
24 are kind of unique. I don't believe -- I

Page 184

1 mean, they're unique in the sense that there  
2 were two different financial statements. It  
3 was a presale stub period in 2016 and then  
4 there was a separate report for the post  
5 sale.

6 So, you know, I think the accounting  
7 reports were prepared in connection with the  
8 sale, so they were sort of outside the  
9 ordinary course of Zuffa's traditional audit  
10 process. So that may have distinguished  
11 them from others.

12 But originally we asked for all the  
13 audited financial statements that were  
14 available. We received through 2015. And  
15 then in connection with the second report we  
16 were given a separate file. I don't  
17 honestly know or recall the timing or where  
18 they came from, but we were given a separate  
19 file that had presale data that was relevant  
20 to the rebuttal report.

21 BY MR. NORTH:

22 Q. Before your first deposition,  
23 plaintiffs never asked you at any point to  
24 determine how much more Zuffa could have paid

Page 185

1 fighters as part of your assignment. Is that  
2 correct?

3 A. That's correct.

4 Q. Before the date of your last  
5 deposition, you never performed computations in  
6 any way to determine how much more Zuffa could  
7 have paid fighters. Is that correct?

8 A. Well, I made the determination as part  
9 of my original report that they could pay more.  
10 So I did -- I did look at the amount of  
11 distributions that were paid and the profits of  
12 the company. And it wasn't difficult to  
13 determine that there was a capacity to pay more.  
14 But I did not do a detailed analysis to determine  
15 how much more they could have paid.

16 Q. Do you recall testifying that the  
17 reason you contemplated a hypothetical shift of  
18 income from Zuffa's original equity holders to  
19 the athletes was to rebut a possible argument on  
20 behalf of Zuffa that they couldn't afford to pay  
21 more?

22 A. I do.

23 MR. KOFFMAN: Object to the form.

24 Sorry. Go ahead.

Page 186

1 THE WITNESS: Excuse me. I do.

2 BY MR. NORTH:

3 Q. But despite anticipating that argument  
4 from Zuffa before your last deposition, you did  
5 not seek to calculate how much more Zuffa could  
6 afford to pay. Is that right?

7 MR. KOFFMAN: Objection; asked and  
8 answered.

9 You can answer.

10 THE WITNESS: Yes.

11 BY MR. NORTH:

12 Q. Let's turn to the list of assignments  
13 in your rebuttal report, Exhibit 2, starting on  
14 page 7.

15 In Paragraph 5 you state that counsel  
16 instructed you to determine how much more Zuffa  
17 could have paid its fighters assuming alternative  
18 but feasible expense and capital structures.

19 Is that correct?

20 A. Yes.

21 Q. Did you use any information for that  
22 analysis that was not available to you at the  
23 time you prepared your original report?

24 MR. KOFFMAN: Object to the form. I

Page 187

1 believe he's answered that, but you can  
2 answer it again.

3 THE WITNESS: The only -- the only  
4 information that I had that was new was the  
5 2016. All the other information from 2005  
6 to 2015 I had.

7 BY MR. NORTH:

8 Q. And I think you testified previously  
9 that you didn't know one way or another whether  
10 those documents were actually available to you.  
11 Is that correct?

12 MR. KOFFMAN: Objection; asked and  
13 answered.

14 THE WITNESS: I think my response was  
15 we made a general request for audited  
16 financial statements. I had assumed we  
17 received everything that was available, and  
18 then subsequently, when they -- when I was  
19 asked to do the analysis of how much more  
20 they could pay, I asked again if there was  
21 information available for 2016.

22 BY MR. NORTH:

23 Q. Would you have been able to perform  
24 the analysis in your rebuttal report when you did

Page 188

1 your original report even though you didn't have  
2 those two additional financial statements?

3 MR. KOFFMAN: Object to the form.

4 THE WITNESS: I would have had to make  
5 assumptions about 2016 or I would have had  
6 to limit the analysis to the period ending  
7 December 31, 2015. I could have done an  
8 analysis, but it wouldn't have been as  
9 thorough as the one that's done here.

10 BY MR. NORTH:

11 Q. In Paragraph 4 of your rebuttal report  
12 you state that "Zuffa's expert, Elizabeth Davis,  
13 opined that Zuffa could not have afforded to pay  
14 the damages as set forth in the Plaintiffs'  
15 expert reports submitted by Drs. Zimbalist and  
16 Singer."

17 Do you see that?

18 A. Yes.

19 Q. Is that the opinion you are responding  
20 to in your rebuttal report?

21 A. Yes.

22 Q. Are you responding to any other  
23 opinions from Zuffa's experts?

24 A. I don't think so.

Page 189

1 Q. And Ms. Davis opined using the damages  
2 numbers provided by plaintiffs' experts. Is that  
3 right?

4 A. Yes.

5 Q. And those numbers are 972 million from  
6 Dr. Zimbalist and 848 million from Dr. Singer for  
7 one model, and 1.6 billion from Dr. Singer for  
8 another model. Is that generally accurate?

9 A. I'll take your word for it. It seems  
10 accurate to me. I don't have the exact numbers  
11 in front of me.

12 Q. Okay. Other than plaintiffs'  
13 economists' numbers, is it your understanding  
14 that Elizabeth Davis offered an opinion regarding  
15 the financial effect of increasing fighter  
16 compensation by some other amount?

17 MR. KOFFMAN: Object to the form.

18 THE WITNESS: I'm sorry. Could you  
19 repeat that question again?

20 BY MR. NORTH:

21 Q. Sure.

22 So backing up a second. Paragraph 4,  
23 you acknowledged that Elizabeth Davis's opinion  
24 regards whether Zuffa could have afforded to pay

Page 190

1 the damages provided by plaintiffs' experts. Is  
2 that right?

3 A. Well, to be clear, the next sentence  
4 makes it -- makes it more specific. Ms. Davis  
5 said that if there is no increased market output,  
6 that Zuffa could not have afforded to pay the  
7 damages set forth by Dr. Zimbalist and  
8 Dr. Singer.

9 My rebuttal report says that if you  
10 assume no additional market output, this is what  
11 Zuffa could have afforded to pay.

12 But in both her report and my report,  
13 the assumption is that there is no increased  
14 market output despite the fact that the  
15 economists have said that there would be.

16 Q. I see. So setting aside increased  
17 market output, does Ms. Davis opine on Zuffa's  
18 ability to pay any amounts other than the damages  
19 estimates provided by plaintiffs' experts?

20 MR. KOFFMAN: Object to the form.

21 THE WITNESS: I don't believe so.

22 BY MR. NORTH:

23 Q. In Paragraph 6 of your rebuttal  
24 report, under Opinion 1, you state that Zuffa



Page 191

1 could have paid its fighters between  
2 525.2 million and 706.7 million more than the  
3 amounts actually paid and remained a financially  
4 healthy company providing certain changes were  
5 made to the company's expense and capital  
6 structure.

7 Is that right?

8 A. I'm sorry, were you at page 6 or  
9 Paragraph 6?

10 Q. I'm sorry, page 10, Paragraph 6. Your  
11 summary of opinions.

12 A. Yes. Could you repeat the question,  
13 please?

14 Q. Certainly.

15 So under Opinion Number 1, you state  
16 that Zuffa could have paid its fighters between  
17 525.2 million, Scenario 1, and 706.7 million,  
18 Scenario 6, more than the amounts actually paid  
19 and remained a financially healthy company  
20 offering substantial returns for its investors  
21 without the benefit of any additional growth in  
22 the MMA industry.

23 Did I read that right?

24 A. Yes.

Page 192

1 Q. You did not determine that Zuffa could  
2 have afforded to increase athlete compensation by  
3 more than 706.7 million. Is that right?

4 MR. KOFFMAN: Object to the form.

5 THE WITNESS: I didn't put a scenario  
6 in here that would allow Zuffa to pay more  
7 than 706, but I was conservative in  
8 constructing this. There are other  
9 scenarios where they could have paid more  
10 than 706, but I limited my analysis to these  
11 six scenarios.

12 The real point of the report is that  
13 there's any number of scenarios wherein  
14 Zuffa could have paid, you know, 500 to  
15 \$700 million more to its fighters. And the  
16 purpose of setting forth six different  
17 scenarios is just to present some examples  
18 of what some of those scenarios are.

19 BY MR. NORTH:

20 Q. And Scenario 6 offers the highest  
21 amount of increased compensation. Is that fair?

22 A. It's the highest amount that I  
23 included in my report, yes.

24 Q. Were there any additional amounts that

Page 193

1 you concluded that Zuffa could have afforded to  
2 pay that you did not include in your report?

3 A. There are other scenarios where you  
4 could pay more than 706, as I mentioned. I  
5 elected not to put them in my report because I  
6 wanted my report to be conservative.

7 Q. And do you intend to offer an opinion  
8 at trial on those scenarios?

9 A. No.

10 Q. So you, in this report, did not  
11 determine that Zuffa could have afforded to  
12 increase athlete compensation by more than  
13 706.7 million. Is that true?

14 MR. KOFFMAN: Object to form.

15 BY MR. NORTH:

16 Q. Is that correct?

17 A. That is correct.

18 Q. Would you agree that the increased  
19 compensation amounts in all six of your scenarios  
20 reflect amounts that are less than the damages  
21 figures offered by Dr. Singer and Dr. Zimbalist?

22 A. Mathematically, numerically they are  
23 smaller numbers. But these are not presented in  
24 my report as alternative damage numbers. These

Page 194

1 are -- the analysis here and the conclusions are  
2 limited to the meaning that's associated with  
3 them based on my instructions. This is not an  
4 alternative damages analysis. This is a capacity  
5 to pay analysis, which is what I was asked to do.

6 Q. Did you attempt to determine the upper  
7 bound of how much Zuffa could have increased  
8 fighter compensation while remaining a  
9 financially healthy company?

10 A. Well, as I said before, I prepared the  
11 analysis in a conservative fashion such that I  
12 limited the analysis to Scenario 6, which is  
13 38 percent of sales revenues. But I did not  
14 endeavor to calculate what the maximum possible  
15 amount was.

16 If you -- as I mentioned, the analysis  
17 I've done here is conservative so that the  
18 financial health of the company is very strong  
19 under any of these scenarios. If I were less  
20 conservative, the number would be higher. And if  
21 you assumed a higher market output, the number  
22 would be higher as well.

23 So you could infer from this data that  
24 with those two adjustments that these

Page 195

1 compensations would fall within the range of what  
2 Dr. Singer and Dr. Zimbalist have opined. But  
3 having said that, this is not an alternative  
4 damages analysis.

5 Q. In your report, did you analyze  
6 whether Zuffa could have afforded to pay the  
7 damages set forth by plaintiffs' experts Singer  
8 and Zimbalist?

9 MR. KOFFMAN: Object to the form.

10 THE WITNESS: No.

11 BY MR. NORTH:

12 Q. Did you analyze in any of your  
13 scenarios, whether in your report or not, whether  
14 Zuffa could pay \$1.6 billion in additional  
15 compensation to fighters?

16 A. No. But keep in mind the \$1.6 billion  
17 estimate assumes a larger output. And I was  
18 specifically instructed in the context of this  
19 analysis to perform it based on an assumption of  
20 no increased market output.

21 Q. So your analysis -- is it fair to say  
22 that your analysis does not address Elizabeth  
23 Davis's opinion that Zuffa would have had a  
24 cumulative operating loss and negative EBITDA

Page 196

1 over the class period if it had increased athlete  
2 compensation by the amount of plaintiffs' damages  
3 estimates?

4 MR. KOFFMAN: Object to form.

5 THE WITNESS: I'm sorry. Can you  
6 repeat that question?

7 BY MR. NORTH:

8 Q. Sure.  
9 So is it fair to say that your report  
10 does not address Elizabeth Davis's opinion that  
11 Zuffa would have had a cumulative operating loss  
12 and negative EBITDA over the class period if it  
13 had increased athlete compensation by the amount  
14 of plaintiffs' damages estimates?

15 MR. KOFFMAN: Same objection.

16 THE WITNESS: Well, it addresses it --  
17 my report addresses that opinion in a sense  
18 that her analysis and her conclusions do not  
19 accurately reflect what the capacity of  
20 Zuffa was or what capacity that Zuffa had to  
21 pay additional fighters.

22 She did not alter the capital  
23 structure within the -- within the means  
24 that were available to the original equity

Page 197

1 holders. She did not consider the -- well,  
2 she did at one point consider the aviation  
3 expenses in a side note of her report.

4 But I think the conclusion that she --  
5 that she has in her report is misleading  
6 because she's not really measuring the  
7 value -- the capacity of the company to pay  
8 additional fighter compensation. She's  
9 merely subtracting the damage number that  
10 the economists calculated from the status  
11 quo financial statements of the business.

12 And there were many decisions that  
13 were made by the original equity holders  
14 that could have been made differently that  
15 would have afforded anyone -- or enabled the  
16 company to pay much higher compensation to  
17 its fighters.

18 BY MR. NORTH:

19 Q. Okay. I appreciate that, but I think  
20 I asked a slightly different question. And that  
21 is: Is it fair to say that your report does not  
22 address Elizabeth Davis's opinion that Zuffa  
23 would have had a cumulative operating loss and  
24 negative EBITDA over the class period if it had

Page 198

1 increased athlete compensation by the amount of  
2 plaintiffs' damages estimates?

3 MR. KOFFMAN: Object to the form.

4 That's exactly the question that he did  
5 answer.

6 You can answer it again.

7 THE WITNESS: I addressed that  
8 specific issue in the sense that I have  
9 calculated what the profits would be and I  
10 have calculated what the financial condition  
11 of the company would be under alternative  
12 capital structures for the amounts that are  
13 in my -- the amounts that are set forth in  
14 my report.

15 I do not in my report use the exact  
16 same number that she has in hers, which I  
17 didn't assess the \$840 million number that  
18 was in one of the economist's reports. But  
19 that wasn't my instruction.

20 BY MR. NORTH:

21 Q. So looking back at Paragraph 4 of your  
22 rebuttal report, you state that "Elizabeth Davis  
23 did not address the portions of Dr. Singer's" --  
24 "Dr. Zimbalist's and Dr. Singer's reports that

Page 199

1 explained the larger industry (larger output  
2 market) that would have existed absent the  
3 alleged anticompetitive behavior."

4 Did I read that right?

5 A. Yes, you did.

6 Q. Are you offering an opinion on the  
7 size of the output market that plaintiffs'  
8 economists contend would have existed absent the  
9 alleged anticompetitive behavior?

10 A. No.

11 Q. Did plaintiffs ask you to perform any  
12 work that is not described in your rebuttal  
13 report?

14 MR. KOFFMAN: I'm sorry. Do you mean  
15 excluding the original report?

16 MR. NORTH: Yes. Thank you.

17 MR. KOFFMAN: So why don't you ask the  
18 question again, I'm sorry, just to make it  
19 clear.

20 MR. NORTH: Sure. I'll try to clean  
21 that up.

22 BY MR. NORTH:

23 Q. So for purposes of the work that you  
24 did for your rebuttal report, did plaintiffs'

Page 200

1 counsel ask you to do any work for the report  
2 that is not included in the report?

3 A. No.

4 Q. Setting aside what plaintiffs' counsel  
5 asked you to do, did you perform any additional  
6 work that is not described in your rebuttal  
7 report in preparing it?

8 A. No. I mean, there were -- there  
9 were -- as you can see from the exhibits, we  
10 created a comprehensive model, and that model was  
11 an evolutionary process. We created it and then  
12 we performed quality controls. We refined it.  
13 So there were previous versions of that same  
14 model that -- that existed. I didn't put every  
15 previous version of the model in the report. But  
16 when the model was complete, then our quality  
17 control model was also complete. Then we  
18 developed the six scenarios in there in the  
19 report.

20 But there is nothing -- there is  
21 nothing substantive or there are no conclusions  
22 that I have reached in connection with this  
23 assignment that are not in my report.

24 Q. So let's walk through the six

Page 201

1 hypothetical scenarios in the rebuttal report,  
2 looking first at Paragraph 6.

7 A. Yes.

8 Q. Why do you make that assumption?

9 A. The underpinnings of this analysis and  
10 the point that I had made from the beginning is  
11 that Zuffa could afford to pay more money to its  
12 fighters by paying less money to its  
13 shareholders.

16 So if I'm doing an analysis to reduce  
17 the amount of money to shareholders, you would  
18 need to remove that debt from the books in order  
19 to determine what the company could afford to pay  
20 its shareholders under -- under this analysis.  
21 So when you -- when you remove that debt from the  
22 books, the interest expense obviously and the  
23 principal payments during the class period are  
24 much lower, which frees up cash which could be

Page 202

1 paid to fighters, which was the purpose of the  
2 analysis that I was doing.

3 Q. Are you offering an opinion that the  
4 loans harmed Zuffa in any way?

5 MR. KOFFMAN: Object to the form.  
6 Ambiguous.

7 THE WITNESS: They reduced Zuffa's  
8 capacity to pay fighters because they had to  
9 pay interest expense on those loans.

10 BY MR. NORTH:

11 Q. But you're not offering an opinion  
12 that the loans harmed Zuffa in any way?

13 MR. KOFFMAN: Object to form.

14 THE WITNESS: The loans created a cash  
15 drain, a cash burden on the company for the  
16 entire class period. And if that is -- if  
17 that is -- I don't know that I would  
18 characterize that as financial harm, but  
19 it's a financial burden. It's an increased  
20 requirement to pay interest expense on those  
21 loans.

22 BY MR. NORTH:

23 Q. Did you examine how the results of  
24 these scenarios would have changed if you had not



Page 203

1 made this particular assumption?

2 A. You mean if I had left all the debt on  
3 the books?

4 Q. Correct.

5 A. No, I did not. That wouldn't have  
6 measured the -- that wouldn't have measured  
7 Zuffa's ability to pay additional compensation to  
8 the fighters during the class period.

9 Zuffa borrowed much more money than it  
10 needed to prior to the class period. And to  
11 properly measure what Zuffa could pay to its  
12 fighters, you need to assume that Zuffa only  
13 borrowed what is needed to make its acquisitions  
14 and operate its company, and then the rest of the  
15 cash flow that Zuffa has is available to pay  
16 fighters. And that's exactly what I did in my  
17 analysis.

18 Q. Second in Paragraph 6 of Opinion 1,  
19 you state all of your scenarios assume Zuffa's  
20 shareholders receive minimum distributions equal  
21 to 40 percent of pro forma net income for tax  
22 purposes. Is that correct?

23 A. Yes.

24 Q. Why did you make that assumption?

Page 204

1 A. Well, Zuffa is an LLC, which is a  
2 pass-through entity, what they call a  
3 pass-through entity for tax purposes. And if  
4 under any of the scenarios Zuffa was producing a  
5 profit, I thought it was reasonable to assume  
6 that the company would distribute money to its  
7 shareholders sufficient to pay the taxes that  
8 they would owe on those profits.

9 So I didn't -- it was again an element  
10 of conservatism. I didn't want to assume that  
11 there was extra cash to pay fighters if the  
12 owners of the business were not given cash in  
13 order to satisfy their tax obligations in any  
14 given year.

15 Q. And how were you able to determine the  
16 tax obligations of the shareholders in any given  
17 year?

18 A. I assumed a 40 percent tax rate.

19 Q. Are the pro forma distributions to  
20 shareholders in your scenarios at least enough to  
21 cover each shareholder's tax obligations?

22 A. I'm sorry, could you repeat the  
23 question?

24 Q. Sure.

Page 205

1 Are the pro forma distributions to  
2 shareholders in your scenarios at least enough to  
3 cover each shareholder's tax liability?

4 A. Generally speaking, a 40 percent  
5 assumption for federal and state taxes in the  
6 United States is conservative, meaning it is  
7 generally more than enough. In this instance  
8 it's even more conservative because part of  
9 Zuffa's profits were earned in other countries,  
10 and the taxes for those countries are already  
11 incorporated in the income statement.

12 So I left those taxes in and I added  
13 another 40 percent of taxes on the total profits  
14 of the company. So really the profits on U.S. --  
15 the taxes on -- the rate on -- that I've  
16 accounted for for U.S. taxes is really more than  
17 40 percent because I've given them 40 percent of  
18 consolidated net income as a tax distribution,  
19 and on top of that the company has escrowed money  
20 for foreign taxes as well.

21 So I think the tax element is more  
22 than taken care of in the analysis that I've  
23 done.

24 Q. How do your hypothetical distributions

Page 206

1 compare to the actual distributions to Zuffa's  
2 shareholders?

3 A. They are lower.

4 Q. Can you estimate how much lower?

5 MR. KOFFMAN: You should feel free to  
6 refer to your report.

7 MR. NORTH: Absolutely.

8 THE WITNESS: I'll take -- Are you  
9 referring to just the class period?

10 BY MR. NORTH:

11 Q. So in all of your scenarios 1 through  
12 6 you allocated distributions to shareholders  
13 based upon different assumptions. Is that fair?

14 A. Yes.

15 Q. Okay. So for all six of the scenarios  
16 can you estimate how those hypothetical pro forma  
17 distributions compare to the actual  
18 distributions? Perhaps with a range.

19 A. I think I can do it this way. If you  
20 look at Exhibit 3, which is page 1 of 7 in  
21 Exhibit 3 -- actually, I'm sorry. I apologize.  
22 That exhibit is not going to tell you.

Page 207

So that's the -- that's the magnitude of the difference for Exhibit 3 -- I mean for Scenario 3. And I can go through the other scenarios and give you a range. But the -- the Scenarios 4, 5 and 6 are going to be -- actually --

Q. Why don't we just limit it to Exhibit 3.

A. Okay. I will say in 4, 5 and 6 a lot more money is distributed. It's complicated, but I can explain that if you need me to.

Page 208

Q. But would you agree that your hypothetical distributions are substantially lower than the actual distributions?

MR. KOFFMAN: Object to the form.

THE WITNESS: Yes. And that's the whole premise of the analysis, is to -- I've taken the -- or I've approached the assignment to say we're paying the shareholders less in distributions and we're paying more to the fighters, and how much more can you do that -- how much can you do that -- how much more can you pay the fighters without creating a financial issue for the company.

BY MR. NORTH:

Q. Did you make any other assumptions that apply to all of your hypothetical scenarios?

MR. KOFFMAN: Object to the form.

THE WITNESS: I believe Paragraph 6 was -- or Paragraph 6 we talk about a few of those. Those are the two. I'm sure there are many assumptions

Page 209

that are saying that would apply to all, but these are the most -- these are the most relevant or the most -- the ones that have the most impact.

BY MR. NORTH:

Q. If they appear in some other part of the report, could you direct my attention to where -- what those other assumptions are or tell me what other assumptions are?

MR. KOFFMAN: Object to the form.

THE WITNESS: One second, please.

Okay. One assumption, additional assumption that applies to all the scenarios is that there's several ways that you can get more money to the shareholders. There's generally three. You can pay -- excuse me, to the fighters.

You can pay the shareholders less money. You can avoid paying interest on debt that you didn't need to borrow. And you can shift excess aviation expenses and management fees to the fighters as well.

So that third one applied to all six scenarios where excess aviation expenses

Page 210

were assumed to be paid to the fighters first and then -- and once that condition was satisfied, then the -- any additional compensation that came to the fighters either came from interest savings or a reduction in shareholder distributions.

BY MR. NORTH:

Q. Okay. And are there any other assumptions that apply to all six scenarios?

A. There's an assumption that there is no increased market, output market; there is no change in the revenues of the company; there's no change in expenses of the company other than fighter comp and aviation and interest.

Those are the only ones I can think of.

Q. Okay. Did you consider making any other assumptions?

A. Well, in the -- in the process of developing the six different scenarios there were -- you know, the reason you build a model is so that you can test different assumptions. So there were other assumptions that were tested.

I tested -- you know, for example in

Page 211

1 the first three scenarios there is an assumption  
2 that the higher compensation starts in 2005 and  
3 that the company accumulates cash by not paying  
4 as much distributions to shareholders, [REDACTED]  
5 [REDACTED], and then uses the accumulated  
6 cash to pay off all of the debt of the company in  
7 2009.

8 Now, those assumptions are different  
9 in 4 through 6, but I did take the assumptions  
10 used in 1 through 3 and increased the revenue to  
11 38 percent of sales to see how that would play  
12 out. And it, too, was feasible.

13 But that's just an example of, you  
14 know, I'm sure dozens of different analyses that  
15 we did or versions of the model that we did to  
16 evaluate what the company could afford to pay.

17 Q. And in testing some of those  
18 alternative assumptions in the model, did you  
19 come across any results that would have been  
20 infeasible?

21 MR. KOFFMAN: Object to the form.

22 THE WITNESS: Well, sure. I mean,  
23 when you get to a point where the company is  
24 no longer profitable, or you have a policy

Page 212

1 of distributing -- I tried to distribute as  
2 much to the shareholders as I could because  
3 under these scenarios the company is holding  
4 a lot of cash. And if you increase the  
5 distribution to the shareholders by too  
6 much, if you have the shareholders getting  
7 paid too much, then you erode away your cash  
8 balances.

9 So there were -- there was an exercise  
10 that we naturally went through to determine  
11 what were the scenarios that were within the  
12 original shareholders' control that weren't  
13 relied -- that didn't rely on third-party  
14 lenders or investors that could have been  
15 adopted such that the company could pay more  
16 money to the fighters.

17 And as I said, there were probably  
18 dozens of different scenarios that we ran,  
19 and we settled on these six as being ones  
20 that were very feasible because in each case  
21 Zuffa is out of the company.

22 BY MR. NORTH:

23 Q. And are any of those alternative  
24 scenarios or changes in the model that you ran

Page 213

1 included in your pack of materials?

2 MR. KOFFMAN: Object to the form.

3 THE WITNESS: Well, the model was  
4 produced, as I understand it, to -- to our  
5 counsel, who produced it to you. So the  
6 ability to run any and all scenarios would  
7 be included in the model that we gave you.

8 There is one model for Scenarios 1, 2  
9 and 3, then there is a separate model for 4,  
10 5 and 6, and you can input different  
11 assumptions into those models and evaluate  
12 the impact of any scenario you wanted.

13 But the only one that appears -- I  
14 mean, so our work papers don't contain other  
15 versions of the model. It is the model.  
16 And you can assess different scenarios by  
17 changing the inputs.

18 BY MR. NORTH:

19 Q. One of the things you mentioned is  
20 that you had tested for Scenarios 1 through 3  
21 increasing fighter compensation to 38 percent.  
22 Do I have that right?

23 A. Yes.

24 Q. Why did you choose not to include that

Page 214

1 in your report, or why did you reject that?

2 A. I wouldn't say that I rejected it.  
3 It's feasible through 38 percent, the company  
4 just has less cash along the way. Because what  
5 happens is that you are, in Models 1, 2 and 3  
6 you're paying the higher compensation beginning  
7 all the way back in 2005. So it has a cumulative  
8 effect on your cash balance. So by the time you  
9 get to the class period your cash is lower.

10 And we changed to the Scenarios 4, 5  
11 and 6 and those assumptions to demonstrate that  
12 there is a feasible scenario wherein the company  
13 would have even more cash and still be able to  
14 pay the fighters between 35 and 38 percent -- 36  
15 and 38 percent -- excuse me -- yes, 36 and  
16 38 percent.

17 Q. So how did you arrive at these six  
18 percentages of revenue that you analyzed in your  
19 report?

20 A. Well, as I mentioned before, we  
21 constructed the model such that if you're going  
22 to change your capital structure or the expense  
23 structure, I wanted to be able to see the whole  
24 portrait of the business, which is the income



Page 223

1 Section D of your report starting at Paragraph  
2 12.

3 So you state that Scenarios 1 through  
4 3 involve using operating cash to, among other  
5 things, pay fighters between 33 and 35 percent of  
6 revenue from 2005 through 2017.

7 Is that correct? This is in  
8 Paragraph 12.

9 A. Yes, I said operating cash without the  
10 burden of excess debt.

11 Q. Is it your understanding that 2005 is  
12 outside the class period in this case?

13 A. Yes.

14 Q. Using the other parameters in  
15 Scenarios 1 through 3, did you model increasing  
16 athlete compensation starting at the beginning of  
17 the class period in 2010 for these scenarios?

18 A. I'm sorry, could you repeat the  
19 question again?

20 Q. Using the other parameters in  
21 Scenarios 1 through 3 that are listed in  
22 Paragraph 12 --

23 A. Uh-huh.

24 Q. -- did you model increasing athlete

Page 224

1 compensation starting at the beginning of the  
2 class period in 2010 as opposed to 2005?

3 MR. KOFFMAN: Object to form.  
4 BY MR. NORTH:

5 Q. As you did for Scenarios 4 through 6?

6 A. Oh, no, I did not. I don't recall  
7 doing that. Let me think for a second.

8 Yes. If I -- if I increased the  
9 compensation from 33 to 35 percent beginning in  
10 the class period as opposed to 2005, the company  
11 would have had a lot more cash at the beginning  
12 of the class period than what I projected in  
13 1 through 3.

14 You know, with respect to 1 through 3,  
15 I was being conservative in saying that if you  
16 adopted a policy that paid between 33 to  
17 35 percent, you start at the beginning of the --  
18 the beginning of 2005 because there is a  
19 cumulative effect of that extra cash use that I  
20 wanted to make sure we accounted for in each of  
21 the subsequent years.

22 Q. And why did you begin with 2005?

23 A. That was the first audited financial  
24 statement that we had. And prior to 2005, my

Page 225

1 understanding was the company was in more of a  
2 developmental stage with its -- developing its  
3 Ultimate Fighter TV program and establishing  
4 regulations and developing its marketing plan. I  
5 didn't have the data prior to that, so I haven't  
6 made any assumptions as to what the -- I didn't  
7 have the data to assume what fighter compensation  
8 would be prior to that.

9 Q. Do you have any data about -- do you  
10 have any data relating to Zuffa's financial  
11 condition prior to 2005?

12 MR. KOFFMAN: Object to the form.

13 MR. NORTH: I can be a little more  
14 specific if that helps with the objection.

15 BY MR. NORTH:

16 Q. Do you have any information about  
17 Zuffa's revenues or profitability that predates  
18 2005?

19 A. I'm noting in my original expert  
20 report that in the documents that were produced  
21 we do have monthly financial statements prior to  
22 2005. They were not audited. I don't recall if  
23 they had balance sheet information. And I  
24 remember them -- I remember there were issues

Page 226

1 associated with them that made it difficult to  
2 match cost categories and other things. But I  
3 honestly don't remember, sitting here, what it is  
4 that they contained.

5 Q. Did you consider running any of your  
6 models starting in 2001, or starting with the  
7 earliest financial information you just  
8 described?

9 A. No. I believed that it was  
10 appropriate and credible to start the analysis  
11 with the first audited financial statement I had  
12 in 2005. Which is, you know, five years or six  
13 years before the class period began.

14 MR. NORTH: Take a quick break?

15 MR. KOFFMAN: Sure.

16 THE VIDEOGRAPHER: The time is  
17 11:53 a.m. Off the record.

18 (Recess taken.)

19 THE VIDEOGRAPHER: The time is  
20 11:59 a.m. We're on the record.

21 BY MR. NORTH:

22 Q. Mr. Davis, you were just explaining  
23 that Scenarios 1 through 3 begin with an  
24 increased athlete compensation in 2005. Is that

Page 227

1 fair?

2 A. Yes.

3 Q. Are you offering an opinion on when  
4 Zuffa's alleged anticompetitive conduct began?

5 A. No.

6 Q. Are you offering an opinion on when  
7 the alleged anticompetitive conduct harmed  
8 Zuffa's competitors?

9 A. No.

10 Q. You state in Paragraph 12 that in  
11 Scenarios 1 through 3 operating cash is used to  
12 retire all outstanding long-term debt by December  
13 31, 2009. Correct?

14 A. Are you referring to the sentence that  
15 says, "The funds produced from operations..."?

16 Q. I am, yes.

17 A. That would be -- if the funds produced  
18 from operations are accumulated from operations  
19 without the excess of -- without the extra debt  
20 and the excessive aviation expenses, so cash is  
21 accumulating during this time period. And then  
22 at the end of 2009 the company had sufficient  
23 cash to pay off all of its debt.

Page 228

1 what I call discretionary distribution debt.

2 Q. And how did you choose the date  
3 December 31, 2009?

4 A. That was the date on which the  
5 cumulative cash balance was sufficient to pay off  
6 all the debt.

7 Q. Is it your understanding that that  
8 date is prior to the beginning of the class  
9 period in this case?

10 A. Yes.

11 Q. Is it your opinion that Zuffa should  
12 not have a capital structure that reflects debt?

13 MR. KOFFMAN: Object to the form.

14 THE WITNESS: It's my opinion that  
15 they could have elected one. They could  
16 have chosen one that didn't have any debt.

17 BY MR. NORTH:

18 Q. Are you offering an opinion --

19 A. Let me restate that.

20 In Scenarios 1, 2 and 3, Zuffa,  
21 because they were paying the higher compensation  
22 beginning in 2005, required some level of debt

in it might have

Page 229

1 been 2007. They needed the debt. Because I  
2 began the increased fighter compensation earlier.

3 In Scenarios 4 through 6 where I  
4 didn't increase fighter compensation until the  
5 beginning of the class period, they had enough  
6 cash on hand such that they didn't need to borrow  
7 any debt and they could still buy Pride and  
8 StrikeForce and meet all their other financial  
9 obligations.

10 Q. So is it fair to say, based on your  
11 analysis, that in Scenarios 1 through 3,  
12 increasing fighter compensation by the amounts in  
13 the scenarios partially required the company to  
14 take on some debt?

15 MR. KOFFMAN: Object to the form.

16 THE WITNESS: In Scenarios 1 through  
17 3, yes. Which I've modeled in the report,  
18 and then I modeled when they accumulated  
19 enough cash to pay it off, they paid it off.

20 BY MR. NORTH:

21 Q. Are you offering an opinion that  
22 Zuffa's actual capital structure was improper?

23 A. No. I'm offering an opinion that the  
24 original equity holders had the option, if they

Page 230

1 chose to do so, to borrow a lot less money than  
2 they did. And in Scenarios 4 through 6 they  
3 could have elected not to borrow any money.

4 Q. Are you offering an opinion that  
5 Zuffa's capital structure was indicative of  
6 anticompetitive conduct?

7 A. No.

8 MR. KOFFMAN: Object to the form.

9 THE WITNESS: No.

10 BY MR. NORTH:

11 Q. Was Zuffa's capital structure simply  
12 not as conservative as your models?

13 A. That's one way of characterizing it,  
14 yes.

15 Q. Was there any requirement that Zuffa  
16 had to retire its long-term debt by  
17 December 2009?

18 A. No.

19 Q. In Paragraph 12 you also state that  
20 "In the first three scenarios, funds produced  
21 from operations without the burden of  
22 discretionary distribution debt, excess aviation  
23 expenses, and management fees are used to pay  
24 shareholders the greater of 40 percent of pro



Page 231

1 forma net income for tax purposes or 50 percent  
2 of available cash."

3 Did I read that right?

4 A. Yes.

5 Q. Why did you choose these levels for  
6 shareholder distributions?

7 A. Well, we talked about the 40 percent  
8 before as being a conservative provision for the  
9 income tax obligations of the original  
10 shareholders. And at a minimum, they got  
11 40 percent.

12 If there was additional cash remaining  
13 on the balance sheet -- excuse me, if there was  
14 additional cash when compared to what was  
15 actually distributed to them, I -- I chose to  
16 distribute that to the shareholders as well.

17 So in Scenarios 1 through 3 there were  
18 I think maybe one or two periods where the  
19 shareholders got more than 40 percent tax  
20 distribution; they also got a distribution of  
21 profits.

22 Q. Okay. Let's skip ahead to Scenarios 4  
23 through 6 on page 17, Paragraph 18.

24 So here you describe three

Page 232

1 modifications for Scenarios 4 through 6. The  
2 first two are that Zuffa does not increase  
3 fighter compensation until the beginning of the  
4 class period, and distributions to shareholders  
5 are limited to 40 percent pro forma net income.  
6 Is that right?

7 A. Yes.

8 Q. And you also state here that  
9 distributions to shareholders and debt burdens  
10 are reduced and the cash savings are used for  
11 other business purposes. Correct? Just above  
12 that Paragraph 18.

13 A. Yes.

14 Q. Why did you change the parameters for  
15 Scenarios 4 through 6?

16 A. Again, this is a -- this is additional  
17 scenarios to show the feasibility of the company.  
18 The point was that there are a number of  
19 different alternative capital structures that  
20 could have facilitated a distribution of between  
21 500 and \$700 million. This is an additional one.

22 In these particular scenarios, because  
23 you're not increasing the fighter compensation  
24 until the class period, and because you're

Page 233

1 limiting distributions to 40 percent, both of  
2 which were within the control of the original  
3 equity holders, the company has substantial  
4 amounts of cash on the balance sheet throughout  
5 the class period, and that was one of several  
6 reasons why we elected to include this particular  
7 scenario, because it was feasible.

8 As I mentioned before, we -- we could  
9 have just continued to use the underlying  
10 assumptions in Scenarios 1, 2 and 3 leading up to  
11 38 percent as a fee-simple compensation structure  
12 as well.

13 Q. Is it fair to say that for Scenarios 4  
14 through 6 your assumption is that Zuffa  
15 stockpiles its cash before the class period in  
16 anticipation of increasing fighter compensation  
17 at the beginning of the class period?

18 MR. KOFFMAN: Object to the form.

19 THE WITNESS: No. No. They would  
20 have accumulated substantial amounts of  
21 cash, but it would have nothing to do with  
22 the anticipation of increasing fighter  
23 compensation.

24 This particular model where you

Page 234

1 increase compensation the beginning of the  
2 class period would emulate a situation where  
3 a regulatory authority or a court of law  
4 required Zuffa to increase its fighter  
5 compensation at the beginning of the class  
6 period. So it's an analysis to look at what  
7 that scenario would have looked like.

8 BY MR. NORTH:

9 Q. But do Scenarios 4 through 6 involve  
10 the company doing anything differently than it  
11 actually did prior to 2010 that would have  
12 increased its cash balances?

13 A. The only thing that increases its cash  
14 balances prior to the class period was that  
15 excess aviation expenses are not paid, so that  
16 accumulates in cash; and the company has no debt  
17 at all. So on the one hand they have to  
18 self-fund the acquisition of Pride, but they also  
19 don't have the associated interest expense with  
20 the debt balances that they actually had during  
21 that time period.

22 Q. Other than increasing the percentage  
23 revenue share, does anything else change about  
24 the company's financial performance in Scenarios

Page 239

1 that sale stay on the company's balance sheet  
2 rather than being distributed to the original  
3 equity holders?

4 MR. KOFFMAN: Object to the form.

5 THE WITNESS: No. Actually I can show  
6 you on -- if you look at Exhibit 1, I'm  
7 looking at Exhibit 1.3, which is page 4 of  
8 7.

Page 241

9 Q. In your opinion, is it improper for an  
10 equity holder to sell shares and retain the  
11 proceeds from that sale?

12 MR. KOFFMAN: Object to the form.

13 THE WITNESS: Is it improper for an  
14 equity holder -- well, in this instance it  
15 was Zuffa that was issuing shares. If the  
16 equity holder -- if the equity holder is  
17 being diluted by a new investor, the dollars  
18 coming in from that new investor, you know,  
19 if you left the money in the company, the  
20 theory would be that that company is going  
21 to create more value so that the sum of the  
22 parts is actually greater than the  
23 pre-transaction value.

24 So there are many instances where

Page 240

8 It was one of the  
9 years where the 40 percent number was  
10 trumped by the fact that there was more cash  
11 available to pay them.

12 That was a terribly long-winded  
13 answer. I apologize for that.

14 BY MR. NORTH:

Q. Let me see if I understand.

Page 242

1 equity shares are issued and the money comes  
2 into the company and creates additional  
3 value such that your percentage interest  
4 might be smaller but the value of that  
5 smaller percentage interest is greater than  
6 what you had before.

7 In this instance, some of the money  
8 stayed in the company under my hypothetical  
9 and some of the money was distributed to the  
10 shareholders.

11 But in Scenarios 4 through 6 -- well,  
12 there is no -- there is no investment in 4  
13 through 6.

So that's irrelevant.

15 BY MR. NORTH:

16 Q. In your original report you assumed  
17 that Zuffa had the financial wherewithal to  
18 borrow funds to increase the compensation paid to  
19 fighters. Do you recall that?

20 A. Yes.

21 Q. Is that still your opinion?

22 A. Yes.

23 Q. Why do your pro forma scenarios not  
24 include this contingency?

Page 243

1 A. Well, the company had the capacity to  
2 borrow money, particularly in 2010 right before  
3 the class period. [REDACTED]

6 But I chose to -- but to quantify how  
7 much more they could have borrowed would have  
8 required that I make assumptions about the risk  
9 thresholds and covenants and decision-makers of  
10 other third-party creditors, and I didn't want to  
11 do that. I wanted to limit this analysis to -- I  
12 wanted to make it more conservative and limit it  
13 to scenarios where there was less debt rather  
14 than more debt. So I wasn't relying upon the  
15 decision of a bank to put more money into the  
16 company.

17 Q. In each of your scenarios, isn't it  
18 true that the pro forma purchase price of Zuffa  
19 in 2016 is lower than the actual purchase price  
20 of 3.775 million even after taking into account  
21 the debt on Zuffa's balance sheet at the time of  
22 the acquisition?

23 A. Yes.

24 Q. Zuffa's enterprise value was lower

Page 244

1 under your pro forma calculations at least in  
2 part due to its higher expense structure. Would  
3 you agree?

4 A. Yes, the majority was because of the  
5 higher expense structure. And as you can see  
6 from the exhibits, we were holding the valuation  
7 multiple constant and recalculating what the  
8 proceeds would have been under the different  
9 scenarios. I mean, it's the proper way to do it.

10 It's also the way that Ms. Davis  
11 suggested that that type of adjustment be done as  
12 well. In her deposition, she acknowledged that  
13 if there was a different EBITDA number, you would  
14 hold the multiple constant and recalculate the  
15 proceeds.

16 So I'm doing it the way it's supposed  
17 to be done, but also consistent with the way  
18 Ms. Davis did it.

19 Q. So you agree there is a relationship  
20 between the EBITDA and the valuation of the  
21 company?

22 A. Yes.

23 Q. Let's turn to a separate section of  
24 your report. Are you aware of the

Page 245

1 characteristics of the but-for world as  
2 constructed by plaintiffs' economists?

3 A. This is not in my report?

4 Q. I'm sorry. That was a little bit of a  
5 misleading introduction.

6 In general, are you aware of the  
7 characteristics of the but-for world as  
8 constructed by plaintiffs' economists?

9 MR. KOFFMAN: Object to the form.

10 THE WITNESS: Generally but not  
11 specifically.

12 BY MR. NORTH:

13 Q. Have you considered how those  
14 characteristics might affect the analysis in your  
15 rebuttal report?

16 A. No.

17 Q. Are you aware that one of the elements  
18 of the but-for world is increased fighter  
19 compensation?

20 A. Yes.

21 Q. Do you agree that when you're  
22 evaluating a scenario where the fighters are paid  
23 more money, you've introduced a but-for world  
24 wherein the MMA industry is larger, it has higher

Page 246

1 output, and there are more competitors?

2 MR. KOFFMAN: Object to the form.

3 THE WITNESS: Generally speaking, I  
4 understand that to be the case.

5 BY MR. NORTH:

6 Q. And you would agree that these  
7 characteristics would apply to any hypothetical  
8 involving paying fighters more money?

9 MR. KOFFMAN: Object to the form.

10 THE WITNESS: I believe I testified to  
11 this in my earlier deposition.

12 Specifically, I said that the -- in a world  
13 where there's larger output, it was not --  
14 it was not made clear to me whether Zuffa  
15 would be a larger company or a smaller  
16 company. The analysis that I've done here,  
17 as I testified before, assumes that there is  
18 no change in the market output and there is  
19 no change in Zuffa's revenues. That was the

20 instructions that I was given.

21 But I'm not offering an opinion on  
22 what a larger market output would look like  
23 and how it would affect Zuffa or any other  
24 competitor.

Page 247

1 BY MR. NORTH:

2 Q. Could Zuffa be a smaller company in  
3 the but-for world?

4 A. I don't know. I guess it could be.  
5 That would be a question for the economists.

6 Q. Could Zuffa's revenues be lower in a  
7 but-for world?

8 MR. KOFFMAN: Object to the form.

9 THE WITNESS: I'm not certain.

10 BY MR. NORTH:

11 Q. Would you agree that to perform an  
12 analysis of how much more fighters could be paid  
13 by Zuffa, you would need to consider a number of  
14 factors?

15 MR. KOFFMAN: Objection; vague.

16 THE WITNESS: Do you mean including or  
17 excluding the larger output?

18 BY MR. NORTH:

19 Q. I can be specific.

20 Would one factor that you would need  
21 to consider be how much money could be paid by  
22 foreclosed competitors in a but-for world?

23 MR. KOFFMAN: Object to the form.

24 THE WITNESS: If I wanted to calculate

Page 248

1 what?

2 BY MR. NORTH:

3 Q. If you wanted to perform an analysis  
4 of how much more fighters could be paid by Zuffa.

5 MR. KOFFMAN: Object to the form.

6 THE WITNESS: Well, I wouldn't  
7 characterize it that way. I would say  
8 that you would -- if you are going to  
9 contemplate a larger industry, and you want  
10 to know how much Zuffa could pay as it's  
11 part of that larger industry, you would need  
12 to know whether Zuffa was a larger or  
13 smaller company.

14 I think that's different than the way  
15 you characterized it, but that's how I would  
16 characterize it. Again, I wasn't asked to  
17 make an assumption on whether the industry  
18 would be larger or smaller.

19 BY MR. NORTH:

20 Q. Would you agree that, leaving aside  
21 the but-for world, Zuffa's EBITDA would decrease  
22 if it increased athlete compensation and held  
23 everything else constant?

24 A. Yes.

Page 249

1 Q. In testing the effect of Zuffa paying  
2 higher fighter compensation, did you consider how  
3 Zuffa paying higher fighter compensation would  
4 affect the size of the MMA market?

5 A. No.

6 Q. Are you offering an opinion on whether  
7 the compensation Zuffa pays athletes would affect  
8 the size of the MMA market?

9 A. I'm sorry. Could you repeat that  
10 again?

11 Q. Are you offering an opinion on whether  
12 the compensation Zuffa pays athletes would affect  
13 the size of the MMA market?

14 A. I'm not offering an opinion on that.  
15 I believe the economists are covering that topic.

16 Q. Did you consider how Zuffa paying  
17 higher fighter compensation would affect the  
18 number of competitors in the market?

19 A. No.

20 Q. Are you offering an opinion on it?

21 A. No.

22 Q. You previously testified that you did  
23 not know whether Zuffa would be larger or smaller  
24 if it increased athlete compensation at your

Page 250

1 previous deposition. Do you recall that?

2 A. Yes.

3 Q. Did you consider how Zuffa paying  
4 higher fighter compensation would affect Zuffa's  
5 size in your rebuttal report?

6 A. I assumed that Zuffa's size would not  
7 change at all in my rebuttal report. This is  
8 simply an analysis to determine at the same size  
9 how much more could they have paid.

10 Q. And on page 10, at Paragraph 6, you  
11 state that "Additional growth in the MMA industry  
12 would be a benefit to Zuffa."

13 Do you see that on the third line of  
14 Opinion 1?

15 MR. KOFFMAN: Sorry. Where are you?

16 MR. NORTH: Page 10, Paragraph 6,  
17 Opinion 1, the third line.

18 BY MR. NORTH:

19 Q. The clause of that sentence states:  
20 "without the benefit of any additional growth in  
21 the MMA industry."

22 Do you see that?

23 A. Yes.

24 Q. In what way would additional growth in



1 the industry be a benefit to Zuffa?

2 MR. KOFFMAN: Object to the form.

3 THE WITNESS: As I said before, I  
4 don't -- I'm not opining on whether larger  
5 market output would make Zuffa larger or  
6 smaller. What I'm making clear here is that  
7 I am -- I was instructed to calculate how  
8 much more they could pay assuming that there  
9 is no increased market. So not assuming if  
10 Zuffa gets any bigger or any smaller. I  
11 don't have an opinion on how a larger market  
12 would affect Zuffa.

13 BY MR. NORTH:

14 Q. What is the basis for your  
15 characterization of additional growth in the MMA  
16 industry as a benefit for Zuffa?

17 MR. KOFFMAN: Object to the form.

18 THE WITNESS: Well, I guess in that  
19 particular sentence I'm assuming that growth  
20 is a benefit. But I would clarify that  
21 sentence and say that I'm not expressing an  
22 opinion that a larger output market would  
23 make Zuffa larger or smaller.

24 BY MR. NORTH:

1 Q. Is it possible that additional growth  
2 in the industry would result in lower revenues  
3 for Zuffa?

4 MR. KOFFMAN: Object to the form.

5 THE WITNESS: I don't know. You would  
6 have to ask the economists that question.

7 BY MR. NORTH:

8 Q. You don't account for lower revenues  
9 or the possibility in your scenarios, do you?

10 A. I do not.

11 Q. Looking at page 11, at Opinion  
12 Number 2, you state -- well, rather -- and we've  
13 been through that so I'll just ask.

14 Over what time period would Zuffa's  
15 equity holders receive your hypothetical  
16 distributions as you describe in Opinion 2?

17 A. Could you repeat the question, please?

18 Q. Sure.

19 Over what time period would Zuffa's  
20 equity holders receive the hypothetical  
21 distributions that you describe in Opinion 2?

22 MR. KOFFMAN: Object to the form.

23 THE WITNESS: The entire time period  
24 that I analyzed from 2005 to 2016.

1 BY MR. NORTH:

6 Do you see that?

7 A. I do.

8 Q. And under Table 2 you use the pro  
9 forma internal rate of return.

10 Do you see that?

11 A. I do.

12 Q. Are you using the term "internal rate  
13 of return" interchangeably with "return on  
14 investment"?

15 A. Yes.

16 Q. Is it your understanding that those  
17 concepts are identical?

18 A. I don't think they are identical. The  
19 return on their investment is not -- is not the  
20 same as return on investment that you would look  
21 up in a textbook. The internal rate of return is  
22 what I'm referring to here, which is a  
23 calculation of cash flows over an investment  
24 horizon.

1 Q. So when you use the term "return on  
2 their investment" under Opinion 3, you are  
3 referring to the internal rate of return?

4 A. That's correct.

5 Q. In your prior deposition, do you  
6 recall testifying that you do not intend to offer  
7 an opinion on the reasonableness of the rate of  
8 return realized by Zuffa's former shareholders?

9 MR. KOFFMAN: Object to the form.

10 THE WITNESS: I'll defer. I recall  
11 testifying about it. I don't recall exactly  
12 what I said. In this instance I was asked  
13 to calculate what it would be for purposes  
14 of the rebuttal report, but it was not used  
15 as a criteria for feasibility.

16 BY MR. NORTH:

17 Q. Would you agree that you express that  
18 opinion in your rebuttal report?

19 A. Yes.

20 Q. Would you agree that distributions to  
21 the equity holders -- strike that.

22 A. Excuse me. If I could clarify.

23 I believe in my original deposition  
24 that when asked if I was going to express a